
**DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE
ABUSE SERVICES
POLICIES AND PROCEDURES**

Section:	Administrative Support	Effective Date:	1/1/05
Team:	Division Affairs	Policy No.	DA-103
Subject:	Division of Mental Health/Developmental Disabilities/Substance Abuse Services Panel Appeal Procedures	Revision date :	

Approved By: Michael Monley **Approval Date:** 12/17/04

Purpose:

The purpose of this policy is to establish procedural requirements for appealing the decisions of a local area authority or county program to the State Mental Health/Developmental Disabilities/Substance Abuse Services (MH/DD/SAS) Appeals Panel.

Scope:

This policy implements North Carolina General Statute § 122C-151.4, Appeal to State MH/DD/SA Appeals Panel, which establishes the State MH/DD/SA Appeals Panel and specifies procedures governing its function and responsibilities.

This policy also implements the following sections of the North Carolina Administrative Code (NCAC) : 10A NCAC 27G .0810, Panel Appeals Procedures; 10A NCAC 27G .0811, Hearing Procedures; and 10A NCAC 27G .0812, Panel Decisions.

As such, this policy prescribes procedures by which the following persons may appeal to the State MH/DD/SAS Appeals Panel after first having exhausted the appeals process at the appropriate area authority or county program:

- (1) A contractor or former contractor who claims that an area authority or county program is not acting or has not acted within applicable State law or rules in imposing a particular requirement on the contractor on fulfillment of the contract;
- (2) A contractor or former contractor who claims that a requirement of the contract substantially compromises the ability of the contractor to fulfill the contract;
- (3) A contractor or former contractor who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided by the contractor or former contractor;
- (4) A client or person who was a client in the previous fiscal year, who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for

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the type of services provided or formerly provided to the client directly by the area authority or county program; and

- (5) A person who claims that an area authority or county program did not comply with a State law or rule adopted by the Secretary or the Commission in developing the plans and budgets of the area authority or county program and that the failure to comply has adversely affected the ability of the person to participate in the development of the plans and budgets.

In the case item (4) above, this policy applies only when the area authority or county program decision reduces funding and thus the general availability of the type(s) of service(s) of which the client or former client was a recipient. This policy is not a vehicle to appeal the decisions of an area authority or county program to deny, terminate, reduce, or suspend the services of a single individual. Those appeals are governed by the Medicaid Appeal Procedures referenced in 42 C.F.R. 431 (Subpart E) for Medicaid eligible individuals, or through the area authority/county program grievance process for non-Medicaid eligible individuals.

Policy Statement:

The State MH/DD/SAS shall, upon written request, provide contractors, former contractors, client, or former clients of area authorities or county programs the opportunity to appeal decisions of the area authority or county program to the State Appeals Panel. Procedural requirements of the appeals process shall be clearly delineated and those with a right to appeal to the Appeals Panel shall be clearly identified.

For purposes of this policy, the following definitions apply:

- (1) Appeals Panel means the State MH/DD/SAS Appeals Panel.
- (2) Client means an individual who is admitted to or receiving public services from an area facility; client includes the client's personal representative or designee.
- (3) Contract means a contract with an area authority or county program to provide services, other than personal services, to clients and other recipients of services.
- (4) Contractor means a person who has a contract or who had a contract during the current fiscal year.
- (5) Former contractor means a person who had a contract during the previous fiscal year.
- (6) Appellant means the party appealing the decision of the area authority or county program.
- (7) Appellee means the party defending the decision under appeal.

Enforcement:

North Carolina Division of MH/DD/SAS Administrative Support Section will monitor the implementation of this policy. Failure to follow this policy shall result in loss of appeal rights to the State Appeals Panel.

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Exceptions: None



Procedure:

Responsibility:

Action:

**DMH/DD/SAS
Hearing Officer**

All appeals of the decision of the local Area Authority or County Program shall be forwarded, along with all supplemental documentation considered during the local area appeals process, to the Hearing Officer within 15 days of the local decision being rendered.

The Hearing Officer shall convene an Appeals Panel consisting of three members. The constitution of the Appeals Panel shall be determined by the nature of the issue under appeal. The Appeals Panel shall consist of members whose expertise parallels the issue under appeal.

The Hearing Officer shall appoint an employee of the Division to serve as Chairman of the Appeals Panel. The Hearing Officer shall also appoint an employee from a neutral Area Authority or County Program to serve on the Appeals Panel. The remaining Panel member shall be appointed from an agency comparable to that of the Appellant. In the case of an appeal by a client, the Panel shall consist of a member whose expertise is in the area of consumer rights.

The Hearing Officer shall forward the record on appeal and all supplemental documentation to the Chairman of the Appeals Panel within 5 days of receipt thereof.

The Hearing Officer shall provide a copy of applicable law, policy, and procedures to the Chairman of the Appeals Panel.

The Hearing Officer shall notify the Appellee of the pending appeal.

Appeals Panel

The Appeals Panel shall, within 15 days of receipt of the appeal, complete an administrative review of the record on appeal and all

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supplemental documentation, render a written decision regarding the matter under appeal, and notify the Appellant and Appellee of its decision.

The decision of the Appeals Panel shall be by majority vote. The written decision shall reflect that either party named in the appeal may appeal the administrative decision of the Appeals Panel by submitting a written request for a Hearing within 15 days of the date of the administrative decision. The written decision shall reflect that it is final unless appealed within 15 days of the date thereof. The Chairman of the Appeals Panel shall author and sign the Panel's written decision.

Upon receipt of a written request for a Hearing, the Appeals Panel shall schedule a Hearing to convene before the Panel within 30 days of receipt of a such request.

The Appeals Panel shall notify the Appellant and the Appellee of the date, time, and location of the Hearing at least 15 days prior to the scheduled date of the Hearing.

The Appeals Panel may obtain any form of factual verification, technical assistance, or consultation relevant to the issue under appeal.

**Chairman,
Appeals Panel**

The Chairman of the Appeals Panel shall convene a Hearing at the scheduled date, time, and location upon written request for a Hearing before the Appeals Panel.

The Chairman of the Appeals Panel shall ensure that the following rules are implemented and observed during the course of the Hearing: the Hearing is an informal proceeding; no sworn testimony shall be taken during the course of the proceeding; the rules of evidence shall not be applied during the proceeding; and the Appellant has the burden of proof.

The Chairman of the Appeals Panel may afford the Appellant as well as the Appellee the opportunity for rebuttal and summary comments during the course of the Hearing.

The Chairman of the Appeals Panel may limit the total number of persons presenting for the Appellant and the Appellee during the Hearing and may impose time limits upon their presentations.

The Chairman of the Appeals Panel shall ensure that (1) the official representative of the Appellant and the Appellee specify by name and position all individuals who will be present for the Hearing, (2) that the Panel is provided with all relevant requested information, and (3) where appropriate, that the Appellant and the Appellee are advised of the need to have a representative available to make a presentation at the Hearing.

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The Chairman of the Panel shall ensure that all persons present at the Hearing address only the Chairman or a specific member of the Appeals Panel who posed a question to the individual. Direct exchanges between presenters for and representatives of the Appellant and Appellee shall be prohibited.

The Chairman of the Appeals Panel shall not stay a decision of an area authority or county program during an appeal to the Appeals Panel.

Appeals Panel

The Appeals Panel shall vote in open session on each specific item under appeal during the Hearing.

The Appeals Panel shall render a final written decision within 30 days of the written request for a Hearing. This decision shall reflect that it was rendered by majority vote.

The Appeals Panel shall, in making its decision, determine the course of action that best protects or benefits the clients of the area authority or county program. The decision may direct a contractor, area authority, or county program to take an action or to refrain from taking an action but it shall not require a party to the appeal to pay any amount except payment due under the contract.

The Appeals Panel may re-schedule a Hearing decision and convene a subsequent meeting if it determines that it lacks sufficient information to render a decision at the conclusion of the Hearing.

**Chairman,
Appeals Panel**

The Chairman of the Appeals Panel shall author and sign all decisions of the Appeals Panel.

The Chairman of the Appeals Panel shall ensure that each decision is conveyed in writing to the Hearing Officer for distribution to the Appellant and the Appellee within 5 days of the Panel decision.

The Chairman of the Appeals Panel shall ensure that the written Hearing decision advises the parties that a person who is dissatisfied with a decision of the Appeals Panel may commence a contested case under Article 3 of Chapter 150B of the NC General Statutes by filing with the Office of Administrative Hearings.

**Hearing
Officer**

The Hearing Officer shall distribute the written decision of the Appeals Panel to the Appellant and the Appellee within five working days of the decision being rendered.